

GMK:TSJ:sms

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

THOMAS PETOFF,	:	No. 3:24-CV-00078
Plaintiff	:	
	:	
v.	:	(Mariani, J.)
	:	
LT. DELMONICO, NURSE YONKIN,	:	
WARDEN OF FCI-ALLENWOOD,	:	
JOHN DOE HEALTH SERVICE	:	
ADMINISTRATOR,	:	
Defendants	:	Filed Electronically

MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

Defendants Lt. Delmonico and Nurse Yonkin, move this Court to dismiss Plaintiff's Complaint pursuant to [Fed. R. Civ. P. 12\(b\)](#) and/or to enter summary judgment in their favor pursuant to [Fed. R. Civ. P. 56](#).¹

A brief in support of this motion will be filed in accordance with M.D. Pa. Local Rule 7.5.

¹ John Doe Warden of FCI-Allenwood and John Doe Health Service Administrator have not been identified by Plaintiff nor served and are therefore, not parties to this lawsuit. The United States Attorney's Office has not been authorized by the Department of Justice to represent them; however, the same analysis would apply to them such that amendment would be futile and for the additional reason that the Complaint lacks any alleged personal involvement in any alleged constitutional violation and *respondeat superior*/vicarious liability are inapplicable to *Bivens* claims.

Counsel certifies that he has not requested the concurrence of Plaintiff pursuant to M.D. Local Rule 7.1 as he is a federal inmate proceeding *pro se*.

Respectfully submitted,

GERARD M. KARAM
United States Attorney

s/ Timothy S. Judge
Timothy S. Judge
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Date: April 8, 2024

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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on April 8, 2024, she served a copy of the attached

MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

Addressee:

Thomas Petoff
Reg. No.: 37150-068
USP Coleman I
U.S. Penitentiary
P.O. Box 1033
Coleman, FL 33521

/s/ Stacey M. Spring
Stacey M. Spring
Paralegal Specialist